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February 10, 2003  
DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Name of Case: Worker Appeal  
Date of Filing: December 20, 2002  
Case No.: TIA-0016

XXXXXXXXXX (the applicant) applied to the Office of Worker Advocacy of the Department of Energy (DOE) for DOE assistance in filing for state workers' compensation benefits on behalf of XXXXXXXXXXXX, her late father (the worker). The DOE Office of Worker Advocacy determined that the worker was not a DOE contractor employee and, therefore, that the applicant was not eligible for the assistance program. The applicant appeals that determination. As explained below, we have concluded that the DOE Office of Worker Advocacy determination is correct.

*I. Background*

The Energy Employees Occupational Illness Compensation Program Act of 2000 as amended (the EEOICPA or the Act) concerns workers involved in various ways with the nation's atomic weapons program. See 42 U.S.C. §§ 7384, 7385. Parts A and D of the Act provide benefits to certain workers.

Part A of the Act provides federal monetary and medical benefits to workers having radiation-induced cancer, beryllium illness, or silicosis. Eligible workers include DOE employees, DOE contractor employees, as well as workers at an "atomic weapons employer facility" in the case of radiation-induced cancer, and workers at a "beryllium vendor" in the case of beryllium illness. See 42 U.S.C. § 7384(1).

Part D of the Act provides for a DOE program to assist "Department of Energy contractor employee[s]" in filing for state workers' compensation benefits for illnesses caused by exposure to toxic substances at DOE facilities. 42 U.S.C.

§ 7385o. The DOE Office of Worker Advocacy is responsible for this program and has a web site that provides extensive information concerning the program. 1/

Pursuant to an Executive Order, the DOE has published a list of facilities covered by the Act and has designated next to each facility whether it falls within the Act's definition of "atomic weapons employer facility," "beryllium vendor," or "Department of Energy facility." 67 Fed. Reg. 79,068 (December 27, 2002) (current list of facilities). 2/ The DOE's published list also refers to the DOE Office of Worker Advocacy web site for additional information about the facilities. 67 Fed. Reg. 79,069 (citing [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy)).

This case concerns Part D of the Act, the portion of the Act that provides for DOE assistance to DOE contractor employees in filing for state workers' compensation benefits. Part D establishes a DOE process through which independent physician panels consider whether employee illnesses were caused by exposure to toxic substances at DOE facilities. If a physician panel issues a determination favorable to the employee, the DOE assists the applicant in filing for state workers' compensation benefits. In addition, the DOE instructs the contractor not to oppose the claim unless required by law to do so, and the DOE does not reimburse the contractor for any costs that it incurs in opposing the claim. 42 U.S.C. § 7385o(e)(3). The DOE has issued regulations to implement Part D of the Act. These regulations are referred to as the Physician Panel Rule. See 67 Fed. Reg. 52,841 (August 13, 2002) (to be codified at 10 C.F.R. Part 852). As stated above, the DOE Office of Worker Advocacy is responsible for this program.

The application for DOE assistance in filing for state workers' compensation benefits states that the worker was employed at the Armco Steel plant in Baltimore, Maryland. The DOE Office of

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1/ See [www.eh.doe.gov/advocacy](http://www.eh.doe.gov/advocacy).

2/ See Executive Order No. 13,179 (December 7, 2000). The DOE first published a list in January 2001, 66 Fed. Reg. 4003 (January 17, 2001), and a revised list in June 2001, 66 Fed. Reg. 31218 (June 11, 2001).

Worker Advocacy determined that the worker was employed by an atomic weapons employer, not a DOE contractor. See September 10, 2002 Letter from DOE Office of Worker Advocacy. Accordingly, the DOE Office of Worker Advocacy determined that the applicant was not eligible for DOE assistance in filing for state workers' compensation benefits.

The applicant appeals from that determination. In conjunction with her appeal, the applicant enclosed newspaper articles stating that Armco Steel sold rolled steel to the federal government for the nation's weapons program.

## *II. Analysis*

### *A. Worker Programs*

As an initial matter, we emphasize that an application for DOE assistance in filing for state workers' compensation benefits is separate from an application for such benefits. A DOE decision that an applicant is not eligible for DOE assistance does not affect (i) an applicant's right to file for state workers' compensation benefits without DOE assistance or (ii) whether the applicant is eligible for state workers' compensation benefits under applicable state law.

Similarly, we emphasize that an application for DOE assistance in filing for state workers' compensation benefits is separate from any claims made under other statutory provisions. Thus, a DOE decision concerning DOE assistance in filing for state workers' compensation benefits does not affect any claims made under other statutory provisions.

We now turn to whether the applicant in this case is eligible for DOE assistance in filing for state workers' compensation benefits.

### *B. Whether the Applicant is Eligible for DOE Assistance in Filing for State Workers' Compensation Benefits*

In order to be eligible for DOE assistance in filing for state workers' compensation benefits, the applicant must be applying on behalf of a worker who was a "Department of Energy contractor

employee." 42 U.S.C. § 7385o(b). In order to be a "Department of Energy contractor employee," a contractor employee must have worked at a "Department of Energy facility." 42 U.S.C. § 7384l(11); 67 Fed. Reg. 52,854 (to be codified at 10 C.F.R. § 852.2). Under the Act and the implementing regulations, a DOE facility is a facility (i) where DOE conducted operations and (ii) where DOE had a proprietary interest or contracted with an entity to provide management and operation, management and integration, environmental remediation services, construction, or maintenance services. *Id.* § 7385o(1)(12); 67 Fed. Reg. 52854 (to be codified at 10 C.F.R. § 852.2) (emphasis added).

The DOE's published list of facilities designates the Armco Steel plant as "AWE," the code for an "atomic weapons employer" facility. 67 Fed. Reg. 79,071. The DOE Office of Worker Advocacy web site indicates that Armco Steel performed a one-time, test rolling of uranium billets for the Atomic Energy Commission in 1948. This description is consistent with the evaluation of the plant by the DOE's Office of Environmental Management, 3/ and we have no reason to believe that it is inaccurate.

The worker in this case was not a DOE contractor employee because he did not work at a DOE facility. The foregoing description indicates that DOE did not conduct operations at the facility, did not have a proprietary interest in the facility, and did not have a management, environmental remediation, construction, or maintenance contract with the firm. The newspaper articles referring to the firm's sale of stainless steel to the government do not change that result. Accordingly, the Armco Steel plant does not fall within the definition of a DOE facility, 42 U.S.C. § 7385o(1)(12); 67 Fed. Reg. 52854 (to be codified at 10 C.F.R. § 852.2) (emphasis added).

As the foregoing indicates, the worker was not a DOE contractor employee and, therefore, the applicant is not eligible for DOE assistance in filing for state workers' compensation benefits. Again, we emphasize that this determination does not affect whether the applicant is eligible for (i) state workers'

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3/ See [www.em.doe.gov](http://www.em.doe.gov) (Featured Items/Considered Sites Database).

compensation benefits or (ii) federal monetary and medical benefits available under other statutory provisions.

IT IS THEREFORE ORDERED THAT:

- (1) The Appeal filed in Worker Advocacy, Case No. TIA-0016 be, and hereby is, denied.
- (2) This is a final order of the Department of Energy.

George B. Breznay  
Director  
Office of Hearings and Appeals

Date: February 10, 2003